

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

DERRICK D. HOWARD,

Plaintiff,

v.

CASE NO. 2:10-1360

BANK OF AMERICA, NA AS SUCCESSOR by MERGER to LaSalle
Bank National Association, AS TRUSTEE FOR Certificate holders
of Bear Stearns Asset Backed Securities I LLC
Asset Backed Certificates, Series 2005-HE 3
c/o EMC Mortgage Corporation.

SERVE: 100 N. TRYON
Charlotte, North Carolina 28255

Defendant.

DECLARATORY JUDGMENT

COMES NOW Plaintiff, Derrick D. Howard PRO SE
and States as follows for his Declaratory Judgment cause
of action:

JURISDICTION

This Court has jurisdiction to hear this case
pursuant to 28 U.S.C. Section 1332 (a)(1). Specifically the
federal Courts have diversity jurisdiction when (1) the suit
involves a controversy between parties of diverse citizenship
and (2) the amount in controversy exceeds \$75,000.00.

1. Plaintiff, DERRICK HOWARD is domiciled in the State of West Virginia.

2. Defendant Bank of AMERICA, NA is and was at all times hereto an entity formed and existing under law. Who's Corporate Office is located in the State of NORTH CAROLINA.

3. The above parties mentioned above in the DECLARATORY Judgment Petition. Satisfy the Requirements of Title 28 U.S.C. 1332 (a) in that.

4. Plaintiff DERRICK HOWARD is domiciled in the State of West Virginia and the amount in controversy exceeds \$75,000.00.

5. Defendant Bank of America, NA is a financial institution. Which is Chartered and has it's Corporate Office in the State of North Carolina and the amount in controversy exceeds \$75,000.00.

6. For the foregoing Reasons, the requirements of Title 28 U.S.C. 1332 (a) are met by having a controversy in excess of \$75,000.00 and the parties are domiciled in different States. Therefore the parties have complete diversity of citizenship.

GENERAL ALLEGATIONS

7. Defendant Bank of AMERICA, NA claims a certain Lien against real property adverse to Plaintiff. The real property that is the subject of this cause of action. Is located at 4433 Kossuth Avenue St. Louis, Missouri 63115.

"Legally Described as" THE SOUTHERN 158 FEET OF LOT 15 OF THE SUBDIVISION OF THE EASTERN PART OF BLOCK 4412-E OF THE CITY OF ST. LOUIS HAVING A FRONT OF 25 FEET OF THE NORTH LINE OF KOSSUTH AVENUE BY A DEPTH NORTHWARDLY OF 158 FEET

8. Defendant Bank of America, NA claim of a legal vested interest in the real property herein described. Starts with a Deed of Trust purportedly executed by Clara Jones the Owner of the herein described property to The Loan Store, Inc., dated December 29, 1999, and recorded on January 14, 2000 in Book M1601 Page 909 in the Office of the Recorder of Deeds for St. Louis City, Missouri. (Copy of said Deed attached as EXHIBIT A) Fully incorporated by this Reference. "Note Tandy L. Hairston is the Owner of The Loan Store, Inc."

10. Tandy L. Hairston OWNER OF THE LOAN STORE, INC., admits in his SWORN STATEMENT. That he fraudulently executed the herein described Clara Jones Deed of Trust. The very Deed of Trust Defendant Bank of America, NA Solely relies upon as their legal vested interest in Said property. (SEE EXHIBIT Tandy L. Hairston SWORN STATEMENT) Fully Incorporated by this Reference.

11. BIS Investments, L.L.C. is owned by Plaintiff Howard.

12. On January 22, 2004, BIS Investments, L.L.C. ("BIS") recorded a deed of trust in the amount of (\$60,000.00) against the said property in Book 01222004, Page 338 in the Office of the Recorder of Deeds for St. Louis City, Missouri. A true and accurate copy of the BIS Deed of Trust is attached hereto as EXHIBIT "B" and is fully incorporated herein by this Reference.

13. On October 27, 2004, Plaintiff Howard entered into a contract to purchase the property from Clara Jones. Contract price \$60,000.00 a true and accurate copy of said

Contract is attached hereto as Exhibit "C" and is fully incorporated by this reference.

14. On December 9, 2004 Plaintiff Howard closed on the purchase of said property.

15. On December 18, 2007 the Clara Jones Deed of Trust was unlawfully foreclosed on by Defendant's Predecessor LASALLE BANK National Association c/o EMC Mortgage Corporation. A Trustee's Deed was issued in favor of Plaintiff, Recorded on January 22, 2008 in Book 01222008, Page 0366 in the Office of the Recorder of Deeds for St. Louis City, Missouri. A true and accurate copy of Trustee's Deed is attached hereto as EXHIBIT "E" and is fully incorporated by this reference.

16. Defendants unlawfully foreclosure caused Plaintiff to sustain monetary losses in excess of \$ 250,000.00 in compensatory damages.

17. Plaintiff, Howard retained counsel and filed a Quiet Title cause of action on October 1, 2007 in Circuit Court of The City of St. Louis, Missouri case no. 0722-cc 08532. Defendant filed an Answer and Counter-claim on February 26, 2008. On August 7, 2008, the court held a status conference. Said conference was reset for September 9, 2008. Due to my incarceration and being domiciled in another state. I was unable to effectively prosecute my claims. Defendants filed a motion to dismiss on September 9, 2008. Said motion was granted. On September 19, 2008 through retained counsel a motion to setaside the dismissal was filed. A hearing date was set for November 13, 2008. In November on or about the 13th of 2008. Plaintiff instructed his retain counsel to withdraw due to Plaintiff hardship of paying the retained counsel legal fees.

18. Plaintiff filed another Quiet Title petition ~~Pro se~~ in the same court St. Louis City Circuit Court Case No. 0922-CC 00965. (SEE EXHIBIT "D" Court Order, Attached Fully Incorporated by this reference)

19. On July 22, 2009, in case No. 0922-CC00965 in the Circuit Court in the City of St. Louis, Plaintiff was awarded a default judgment against Defendant. "SEE EXHIBIT "F" Default Judgment"

20. On October 16, 2009 Defendants filed a Quiet Title cause of action case no. 0922-CC09447 in St. Louis City Circuit Court state of Missouri.

21. Defendant Bank of AMERICA, NA was abusing the state Court system to circumvent the default judgment entered in Plaintiff favor July 22, 2009. A true and accurate copy attached as Exhibit "F" fully incorporated by this reference. "Default Judgment"

22. On January 29, 2004 Tandy L. Hairston owner of the Loan Store, Inc., and Iris Jean Whitener-Batchman Notary Public were indicted by a Federal grand jury along with others. In the United States District Court for the Eastern District of Missouri (St. Louis) Case No. 4:04-CR-00050-ERLW-1. In a multi-count (17 counts) related to Mortgage Fraud Schemes (see EXHIBIT G Criminal Docket sheet) fully incorporated by this reference.

23. On March 22, 2004 Tandy L. Hairston owner of The Loan Store, Inc., entered a guilty plea to the following counts of the indictment. Count (1) Wire Fraud, Count (5) Wire Fraud, Counts (10-11) Wire Fraud, Count (14) Conspiracy. (SEE Exhibit G Criminal Docket sheet) fully incorporated by reference.

24. On March 24, 2004 two days after entering a guilty plea to the counts named in paragraph 23. Tandy L. Hairston (owner of The Loan Store, Inc.) signed a sworn statement acknowledging and admitting he fraudulently executed the Clara Jones Deed of Trust in favor of The Loan Store, Inc., dated December 29, 1999, and recorded on January 14, 2000 in Book M1601, Page 909 in the Office of the Recorder of Deeds St. Louis City, Missouri. (SEE EXHIBIT "H" Tandy L. Hairston sworn statement) Fully incorporated by this Reference

25. On July 8, 2004 In United States District Court For The Eastern District of Missouri (St. Louis) Case No. 4:04-CR 00050-ERW-1. Tandy L. Hairston owner of The Loan Store, Inc., was sentenced on counts (1),(5),(10-11), (14) of the herein described indictment. To a term of sixty four months on each count to be served concurrently in the Federal Bureau of Prisons. Followed by THREE years of supervised Release and Restitution in the amount of (\$2,424,357.00) (SEE EXHIBIT "G" Criminal Docket sheet)

26. Plaintiff Howard is owed attorney fees. As a result of having to previously retain counsel to litigate this cause of action and previous causes of actions. Related to the Clara Jones Deed of Trust.

27. Tandy L. Hairston was aware of the fact the herein described Clara Jones Deed of Trust was fraudulent. As well as Defendant Bank of America, NF.

28. Defendant Bank of America, NF acted in bad faith.

29. Defendant Bank of America, NA negligently ignored Plaintiff when advised of the fraudulently executed Clara Jones Deed of Trust. Said negligence resulted in Plaintiff Howard losing rental income from the said property in the amount of (\$80,000.00).

30. Defendant Bank of America, NA alleged claim of right, estate or any form of legal vested interest in the real property herein described is without merit thus void and unenforceable under any legal statute or law and/or legal theory.

31. Therefore Defendant Bank of America, NA can not in good faith allege a justifiable controversy between Plaintiff and Defendant regarding the Clara Jones Deed of Trust. Since it's obvious Tandy L. Hairston fraudulently executed said Deed.

32. Clara Jones never executed the herein described Deed of Trust. Please see Clara Jones SWORN Statement attached as EXHIBIT "I" fully incorporated by this reference.

33. Plaintiff hereby states any and all exhibits are true and accurate copies of the original documents and/or copies of originals provide to Plaintiff by Defendant and reliable third parties.

34. Defendant Bank of America, NA has alleged that Tandy L. Hairston fraudulently executed a full Deed of Release. That issue is a moot point. Based on undisputable facts that the Clara Jones Deed of Trust was fraudulently executed. Therefore said Deed was then and now void and unenforceable. Therefore the issue isn't ripe for judicial resolution.

To determine if Tandy L. Hairston was authorized to release the Clara Jones Deed of Trust. Since he executed said Deed fraudulently.

WHEREFORE, Plaintiff Derrick Howard prays this Court for Declaratory Judgment in his favor and against Defendant Bank of America, NA as follows:

(a.) declaring, decreeing, and adjudging that the Clara Jones Deed of Trust executed in favor of The Loan Store, Inc. dated December 29, 1999 and recorded on January 14, 2000 in Book M1601, Page 909 in the Office of the Recorder of Deeds for the St. Louis City, Missouri is void, unenforceable and fraudulently executed.

(b.) declaring, decreeing, and adjudging Trustee's Deed issued in favor of Lasalle Bank National Association c/o EMC Mortgage Corporation as void and unenforceable. Dated December 18, 2007. Recorded on January 22, 2008 in Book 01222008, Page 0366 in the Office of the Recorder of Deeds for St. Louis City, Missouri.

(c.) declaring, decreeing, and adjudging Plaintiff Derrick Howard holds fee simple title to the property located at 4433 Kossuth Avenue St. Louis, MO 63115. By virtue of default Judgment entered in his favor against Defendant in case no. 0922-CC00965 in the St. Louis City Circuit Court State of Missouri. Said default judgment was entered on July 22, 2009.

(d.) declaring, decreeing, and adjudging that Lasalle Bank National Association c/o EMC Mortgage Corporation and/or Bank of AMERICA, NA Owns no right, title or interest in the Real property located at 4433 Kossuth Avenue St. Louis, Missouri 63115.

(e.) declaring, decreeing, and adjudging Defendant Bank of AMERICA, NA is liable for Plaintiff Derrick Howard attorney fees and expenses paid to private Investigator Kimberly R. Littton to a combined total of (\$25,000.00).

(f.) declaring, decreeing, and adjudging Defendant Bank of America, NA is liable for compensatory damages Plaintiff sustained as a direct result of the unlawful foreclosed Clara Jones Deed of Trust. In the amount of (\$250,000.00).

(g.) declaring, decreeing, and adjudging Defendant Bank of America, NA be held liable for the lost of rental income due plaintiff. As a result of the unlawful December 18, 2007 Foreclosure

(h.) declaring, decreeing, and adjudging that Plaintiff DERRICK Howard pursuant to Missouri Rules of Civil Procedure Rule 87.10 Plaintiff my seek further Monetary relief in the form of compensatory and punitive damages on counts 1, 2, 4, 5, of his Counter claims in case no. 0922-CC 08447 and 0922-CC 00865 in the Circuit Court of the City of St. Louis state of Missouri.

(i.) declaring, decreeing, and adjudging that Defendant Bank of AMERICA, NA be ordered to pay punitive damages determined by the court to plaintiff DERRICK Howard as a direct result of the December 18, 2007 Foreclosure on the Clara Jones Deed of Trust.

(j.) awarding costs and fees incurred herein; and

(k.) granting such other and further relief it deems just and proper under the premises.

DERRICK HOWARD # 24997-044

P. O. BOX 2000

Bruce ton Mills, WV 26525

9.

Respectfully submitted PRO SE
DERRICK HOWARD
Derrick Howard